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Paper No. 26

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SEP 15 2003

In re Application of
Nachom
Application No. 09/487,354
Filed: January 18, 2000
Attorney Docket No. NAC99-001P
For: COMMUNICATION ENHANCEMENT
MEANS

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(a), filed May 6, 2003. The petition will be treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed on August 12, 2002, which set forth a 3 month period for reply. The Office has no record of receiving a reply. Thus, the Office contended that this application became abandoned on November 13, 2002. A Notice of Abandonment was mailed on March 7, 2003.

Petitioner asserts that a timely and proper response to the August 12, 2002 non-final Office action was mailed to the Office on February 12, 2003. The original papers filed are not of record in the file and cannot be located. Petitioner has provided copies off all papers allegedly filed on February 12, 2003. The copy of the itemized transmittal form lists an amendment, an extension of time request, a power of attorney, a fee transmittal form and fee, and return receipt postcard. The transmittal form contains a proper certificate of mailing citing a February 12, 2003 date of deposit. The petition for extension of time and the amendment both have their own February 12, 2003 certificate of mailing. In addition, it is noted that a check for \$639 was received in the Office on February 19, 2003 and negotiated on February 21, 2003. The copy of the original fee transmittal form states that a check for \$639 was enclosed.

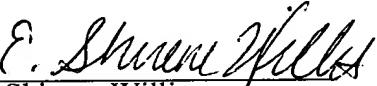
Under 37 CFR § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 CFR § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 CFR § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The itemized transmittal letter, the amendment, and the petition for extension of time each bear a proper certificate of mailing, dated February 12, 2003, in compliance with the requirements of 37 CFR § 1.8(a)(1) as set forth above. In addition, the person signing the certificates, Susan Ocegueda, had reasonable basis to expect that the correspondence would be mailed on February 12, 2003. Ms. Ocegueda has provided a statement regarding her deposit of the mailing in the Wilshire Boulevard USPS mail box on February 12, 2003.

Accordingly, the petition to withdraw the holding of abandonment is granted. As a petition under 37 CFR 1.181 is feeless, the \$55 fee submitted with the instant petition will be credited to petitioner's deposit account no. 02-2666.

The application file will be forwarded to the Technology Center 3600's technical support staff for entry of the February 12, 2003 amendment, extension of time, and power of attorney. Thereafter, the application file will be forwarded to the examiner for action in due course.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.


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